

# EXHIBIT D

To Motion In *Limine*  
to Preclude Certain Opinion Testimony of Bruce E. Dale

Excerpts from transcript of 1/25/2007 trial testimony  
of Monte Naff

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United States Court Reporter

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

UNITED STATES FIDELITY AND	)	
GUARANTY COMPANY,	)	
	)	Plaintiff,)
and	)	CV-04-29-BLG-RFC
	)	
	)	VOLUME 4
CONTINENTAL INSURANCE COMPANY,	)	TRANSCRIPT OF JURY TRIAL
Plaintiff Intervenor,	)	
vs.	)	
	)	
SOCO WEST, INC., BRILLIANT	)	
NATIONAL SERVICES, INC.,	)	
STINNES CORPORATION, and	)	
BRENNTAG (HOLDING) N.V.,	)	
Defendants.)	)	
	)	

BEFORE THE HONORABLE RICHARD F. CEBULL  
UNITED STATES DISTRICT COURT JUDGE  
FOR THE DISTRICT OF MONTANA

James F. Battin United States Courthouse  
316 North 26th Street  
Billings, Montana 59101  
Thursday, January 25, 2007  
08:37:40 to 16:47:40

Proceedings recorded by machine shorthand  
Transcript produced by computer-assisted transcription

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## APPEARANCES

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Attorney at Law  
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Also present for  
graphics display: MS. JULIANNE ROHM  
MR. MIKE S. GREER

REPORTER'S NOTE: "Uh-huh" and "Um-hmm" indicate  
affirmative responses. "Huh-uh" and "Hm-umm" indicate  
negative responses.

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365 01/29/91 Letter to Valued Customer from Naff ... 909  
380 06/08/93 Memo to Cain, Kjos from Diede ..... 909  
3025 07/02/87 Memo to Dick, Russ, Bob, Kevin, Ivan,  
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## PROCEEDINGS

(Open court.)  
(Jury present.)

THE COURT: Please be seated.

THE CLERK: The Court has set aside this time to  
hear the matter of Civil 04-29-BLG-RFC, USF&G and Continental  
v. Soco West, for Day 4 of the jury trial.

THE COURT: Mr. Mielenhausen, you may call your next  
witness. Mr. Cozzens, you may call your next witness.

MR. COZZENS: Thank you.

Soco calls Charles Bender.

WHEREUPON,

MR. CHARLES BENDER,

called for examination by counsel for defendants, after having  
been first duly sworn to testify the truth, the whole truth,  
and nothing but the truth, testified as follows:

## DIRECT EXAMINATION

BY MR. COZZENS:

Q Good morning, Mr. Bender.

A Huh? You're going to have to talk pretty loud for me,  
because I'm awful hard of hearing, and I just put a new  
battery in, and I lost one of my hearing aids.

Q Okay. Can you hear me now?

A Yeah.

Q All right. Where do you live?

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1 A Yes.

2 Q Did you notice what the consistency of the soil was down

3 there?

4 A It was just dirt, sandy, loam dirt. No vegetation.

5 Q All right. Now I notice that there's no tanks out there.

6 When Dyce moved in, did it begin to put tanks, storage tanks,

7 out?

8 A Yes. There were six tanks in this building here. We

9 pulled the roof off and put them out here. We laid a gravel

10 base and put the tanks outside.

11 Q Okay. Mr. Naff, showing you what's been marked as

12 Exhibit 2533, this is a 1975 aerial photograph. Are you

13 familiar with this --

14 A Yes, I am.

15 Q -- what's depicted here?

16 We've already, Mr. Naff, in the trial, had people point

17 out the features, so I won't ask you to go into too much

18 detail here, but I would like you to focus in on where is the

19 area that bulk chemicals were loaded and unloaded?

20 A This, the trucks would back into this area right here in

21 front of the small warehouse.

22 Q Now can you tell me, did you ever have an opportunity to

23 observe the drainage in that area?

24 A Well, there was a berm all the way around here, and the

25 water would drain down here and back down on the tracks.

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1 Q All right. Now what is that square structure that's

2 catty-corner from the smaller warehouse?

3 A This, this is the drumming shed where we drummed product.

4 Q And what exactly was in that drumming shed? Can you

5 explain what was in there?

6 A In 1975, what we had in there was just a very simple

7 scale we could put one drum at a time on, at this end, and

8 there was rollers that came from this end down. We could drum

9 one drum at a time on the scale.

10 Q Was there any drain in that drumming shed?

11 A Well, the only drain was below the rollers and then out

12 the back. I think if anything got spilled, if anything, it

13 was captured below the rollers. That was a low area in the

14 concrete.

15 Q And does that mean anything spilled in the drumming head?

16 A Yes.

17 Q And where did the drain go to?

18 A It went out back. As I remember, it just drained out

19 towards the pond out here --

20 Q All right.

21 A -- the catch pond.

22 Q Now you mentioned a weigh scale and rollers. What

23 exactly was the floor of the drumming shed? What was that

24 made of?

25 A It was concrete.

1 Q Now was that concrete level with the surface of the drive

2 there, the driveway, or was it -- you know, can you explain

3 that?

4 A Well, you had to step up a little bit. Maybe like a

5 curbed step, 4 or 5 inches thick. And then it was hollowed

6 out in the middle under the shed where the rollers were.

7 Q All right.

8 A I mean, it was lower there, kind of, the drain and a

9 place for the rollers to rest on.

10 Q And what was the, what I've just called -- well, the

11 drive area, or I believe it's been referred to as the

12 alleyway? What was that made -- what was the surface of that

13 area?

14 A This area was asphalted. We asphalted this whole area, I

15 think, that first spring after we were there.

16 Q Now the area that you just pointed to, the loading and

17 unloading area, did you ever observe water draining into the

18 drum shed itself?

19 A Not that I ever observed. It was higher than the

20 driveway.

21 Q Do you know why it was higher than the driveway?

22 A Well, you had to -- we built it up so we could actually

23 lower the center to put the rollers in. And the concrete, I

24 think, was just basically built on top of the gravel, you

25 know, at ground level. It seems to me it was about curb

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1 height.

2 Q Did you observe what would happen if the floor of the

3 drumming shed was the same surface or the same level as the

4 surface of the asphalt?

5 A Well, the slope of all of the property is, say, this

6 direction. You would have had all the water coming right

7 through the drumming shed.

8 Q And is that why, another reason why the curb was there?

9 A It could have been.

10 Q You didn't design this?

11 A No.

12 Q Okay. Now was there -- what was just outside of the --

13 to the east of the little warehouse, if anything?

14 A Just east? You're talking here?

15 Q Right.

16 A Well, there was a concrete apron that was there when we

17 moved in that came, I don't know, maybe 10 or 12 feet. I

18 don't -- I'm not positive how far that went out, but it was a

19 little, you know, concrete apron with kind of an extension of

20 the inside garage floor that gradually sloped down to ground

21 level.

22 Q Was that there when Dyce first moved onto the site?

23 A Yes, I believe so.

24 Q Now one thing I'm confused about is if -- and let me know

25 if you know this or you observed this -- if water or any other

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1 liquid was to drop onto that concrete apron, how is it that it  
 2 could end up going to the west?  
 3 A Well, everything sloped kind of, you know, gradual slope  
 4 from here back to here. Then you had a gradual slope from  
 5 here to here, so you had almost a natural path in front of  
 6 that apron where everything would just flow back into the  
 7 ditch. All the water would just go back into the gravel  
 8 ditch.  
 9 Q Now right to the north of the little warehouse, what was  
 10 the surface of the ground there?  
 11 A Just gravel, and then there was a berm right about here  
 12 somewhere.  
 13 Q And that's what -- we'll call that -- is that the berm,  
 14 the south berm of the tank farm?  
 15 A Yes.  
 16 Q And how far over to the east did that extend?  
 17 A Well, I believe it went clear behind the drumming shed.  
 18 Right across here.  
 19 Q Now, Mr. Naff, I will ask you this question, with the  
 20 judge's permission, to go up to that photo and take a close  
 21 look just to the left of the drumming shed.  
 22 THE COURT: Go ahead.  
 23 MR. MIELENHAUSEN: Is that okay?  
 24 THE COURT: Go ahead.  
 25 ///

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1 BY MR. MIELENHAUSEN:  
 2 Q Go ahead.  
 3 A You're talking here?  
 4 Q Right in there.  
 5 A Here?  
 6 Q Yeah. And is that an area there between two shadows?  
 7 A Yes.  
 8 MR. DAVIS: Can't hear the witness.  
 9 MR. MIELENHAUSEN: He said yes.  
 10 BY MR. MIELENHAUSEN:  
 11 Q And, Mr. Naff, if you could speak up? Or maybe we need  
 12 that microphone.  
 13 THE COURT: Let's get the mike, please.  
 14 (Discussion off the record.)  
 15 BY MR. MIELENHAUSEN:  
 16 Q Mr. Naff, I'd like you to take a close look at that area  
 17 that's between the shadows, and can you tell me, do you see  
 18 the south berm there? And, if so, could you point to that?  
 19 A Well, the berm would have been right through here  
 20 somewhere. I can't really see it, but this is where it was,  
 21 is just right here, and then --  
 22 Q Do you see something to the north of the berm?  
 23 A This is where the perc tank was, right here.  
 24 Q What was the capacity of that tank?  
 25 A 1,500-gallon.

1 Q You can go ahead and sit down. Thank you.  
 2 Now I'd like to ask you, do you know whether there were  
 3 any pipes or lines coming from the perc tank?  
 4 A There was a pipe -- the perc tank was down in a concrete  
 5 vault kind of thing, or it had, you know, concrete floors and  
 6 walls. Over the wall, we had the pipe, the loading and  
 7 unloading pipe. It came -- it stubbed off. It just laid on  
 8 top of the berm. And it was stubbed off coming this direction  
 9 for loading, for filling it. And then I believe there was a  
 10 pipe that T'd off that that went into the drumming shed.  
 11 Q So you had one pipe going to the drumming shed and one  
 12 pipe going straight out; is that right?  
 13 A Well, where it T'd there.  
 14 Q Okay.  
 15 A Just right on top of the berm.  
 16 Q Now the pipe that went out and was just on top of the  
 17 berm, what was the purpose of that pipe?  
 18 A Going this way?  
 19 Q No, the pipe that you mentioned that came out and rested  
 20 on the berm.  
 21 A Well, it was for loading or drumming. I mean, the one T  
 22 that came out this way was for loading the tank, filling the  
 23 tank, and the one that went over this way went and then L'd  
 24 back into the, into the drumming shed.  
 25 Q So the pipe that L'd back into the drumming shed, was

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1 that for drumming?  
 2 A Yes.  
 3 Q And the other pipe, you mentioned that it was -- did you  
 4 say it was for loading the tank?  
 5 A Right, for filling the tank.  
 6 Q What do you mean by "tank"? What tank?  
 7 A The perc tank right here.  
 8 Q And when you say "loading" the perc tank, what would you  
 9 be loading into?  
 10 A Well, we would have a truck backed in, and we would run a  
 11 rubber hose from here back and hook into the pipe from the  
 12 tank truck to load at the perc tank.  
 13 Q What about was that pipe also used for loading the Dyce  
 14 tote or trucks?  
 15 A Later, it was.  
 16 Q Okay.  
 17 A At this time, it was all drums.  
 18 Q Okay. Now was there any -- could you point again to the  
 19 place where that pipe came out and rested on the berm?  
 20 A It was about right here.  
 21 Q All right. Was there any drain in that area that went  
 22 into the tank farm?  
 23 A Not that I recall.  
 24 Q Okay. And when that pipe, you mentioned, was resting on  
 25 the berm -- and did you say, did you use the word "flattened"